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From:

Sent: Friday, September 28, 2012 10:52:10 AM

To:

Cc:

Subject: Response to your inquiry

You indicate that X is named the executor of Y's estate under Y's will. State law provides that any person having possession of a small asset valued at \$15,000 or less may pay or deliver the small asset to any successor provided that 1. At least 60 days have elapsed since the decedent's death; and 2. No application for the appointment of a personal representative is pending or has been granted in any jurisdiction. The designated successor shall have a fiduciary duty to safeguard and promptly pay or deliver the small asset as required by the laws of the State to other successors, if any.

Section 7701(a)(6) defines "fiduciary" as a "guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person." The regulations further provide that "fiduciary" refers to "persons who occupy positions of peculiar confidence toward others, such as trustees, executors, and administrators." Treas. Reg. Section 301.7701-6. To date, the Service has issued only limited guidance expounding upon the definition of fiduciary under section 7701(a)(6).

As the executor, X should be treated as a fiduciary for federal income tax purposes. An executor is generally considered a fiduciary under section 7701(a)(6) and 301.7701-6. Whether the estate remains open for state law purposes is not necessarily determinative of whether an estate exists for federal tax purposes. See section 1.641(b)-3.